



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 27 2007

William Gheen, President
Americans for Legal Immigration PAC
P.O. Box 30966
Raleigh, NC 27622

Re: MUR 5896
William Gheen

Dear Mr. Gheen:

On March 8, 2007, the Federal Election Commission ("Commission") notified you of an amendment to a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On September 18, 2007, the Commission found, on the basis of the information in the amendment to the complaint, that there is no reason to believe that you violated 2 U.S.C. § 441a(a)(1)(C). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

BY: Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Americans for Legal Immigration PAC - 2006 MUR 5896
5 and Daryl George Jurbala,
6 in his official capacity as treasurer
7 William Gheen
8

9 **I. INTRODUCTION**

10
11 This matter involves allegations that Americans for Legal Immigration PAC - 2006 and
12 Daryl George Jurbala, in his official capacity as treasurer, ("ALIPAC") and ALIPAC's President,
13 William Gheen, violated the Federal Election Campaign Act of 1971, as amended (the "Act") in
14 several respects. Specifically, the complaint and its subsequent amendments¹ (the "complaint")
15 allege that ALIPAC violated the Act's reporting requirements by failing to disclose: (1) in-kind
16 contributions that it had made to various candidates on its website through endorsements, the cost of
17 equipment and software, etc. required to distribute 7,000 e-mails on behalf of its endorsed
18 candidates, and travel and telephone expenses for Gheen's travel and communications to support
19 those candidates; (2) in-kind contributions to ALIPAC arising from Gheen's alleged use of home
20 office space to conduct the activities of ALIPAC, which may have been excessive; and (3) alleged
21 receipts or disbursements relating to an online store that sells merchandise with ALIPAC logos.
22 Additionally, the complaint alleges that ALIPAC improperly received a prohibited contribution

¹ The complaint was filed with the Commission on January 11, 2007, with subsequent amendments to the complaint filed on January 30, 2007, March 5, 2007 and March 8, 2007.

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1 from the Salvation Army, a non-profit corporation.² Finally, the complaint alleges that ALIPAC
2 defrauded contributors by representing in numerous communications that it intended to elect
3 candidates, when it actually intended to use the contributed funds for ALIPAC employee salaries.

4 In its February 5 and 22, 2007 responses (the "Response"), ALIPAC disputes that it was
5 under any obligation to disclose its website endorsements as in-kind contributions or to disclose the
6 minimal costs associated with the e-mails it sent. It further disputes that it made travel or phone call
7 expenditures in support of individual candidates. With respect to the allegation that ALIPAC failed
8 to disclose receipts and disbursements concerning the online store, ALIPAC states that the online
9 store was the work of a volunteer supporter, that ALIPAC did not make any payments for this effort,
10 and that neither ALIPAC nor its officers or volunteers received any payments or profits from the
11 online store. ALIPAC also denies the receipt of a prohibited contribution from the Salvation Army,
12 stating that the receipt of money from the charitable organization represents the refund of a prior
13 donation that ALIPAC had made to it. It also refutes the allegation that it defrauded contributors
14 through misrepresentations about how the contributed monies would be used. The response does
15 not address the allegation that William Gheen made, and ALIPAC failed to disclose, an excessive
16 in-kind contribution from Gheen in the form of home office space.

17 As discussed more fully below, the Commission has found no reason to believe that
18 ALIPAC violated 2 U.S.C. § 434(b) with respect to the failure to report Internet communications

² The original complaint also alleged that ALIPAC improperly reported \$1,500 in contributions to the Committee to Elect John Jacob, when it should have reported \$2,000. However, a subsequent amendment to the complaint retracts this allegation, noting that the discrepancy was more a function of "sloppy handwriting" than a reporting violation. Likewise, the complainant also retracted the allegation that ALIPAC leaders diverted profits from an online store for purposes of personal use. Neither of these allegations appear to have had any merit.

1 and travel and telephone expenses as in-kind contributions or independent expenditures to
2 ALIPAC's endorsed candidates and found no reason to believe that ALIPAC violated 2 U.S.C.
3 § 441b(a) with respect to receipt of an alleged prohibited contribution from the Salvation Army.
4 The Commission has also found no reason to believe that ALIPAC violated 2 U.S.C. § 434(b) with
5 respect to alleged non-reporting relating to alleged home office expenses and has dismissed the
6 allegation that William Gheen violated 2 U.S.C. § 441a(a)(1)(C) in connection with these alleged
7 expenses. Additionally, the Commission has found no reason to believe that ALIPAC violated
8 2 U.S.C. § 434(b) in connection with the alleged reporting of receipts and disbursements regarding
9 an online store. Finally, the Commission has found no reason to believe that ALIPAC violated the
10 Act with respect to the allegation that it defrauded contributors and has closed the file.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Alleged Failure to Disclose In-Kind Contributions to ALIPAC's Endorsed** 13 **Candidates**

14 15 **1. Facts** 16

17 On September 9, 2004, ALIPAC, a non-connected political committee, filed its Statement of
18 Organization with the Commission. According to the platform statement found on its website,
19 ALIPAC's objective is to "reduce illegal immigration." See
20 <http://www.alipac.us/modules.php?name=Content&pa=showpage&pid=14>.

21 It appears that ALIPAC, which states on its website that it has received over 50 million
22 "page views" since September 11, 2004, extensively utilizes the Internet to advance its agenda.³
23 ALIPAC includes endorsements of political candidates, numerous articles and other information on

³ ALIPAC's disclosure reports reveal only one disbursement for non-web based communications—a mailer in the amount of \$116.56 and slightly over \$1,000 in postage costs. It also shows letterhead, envelope, and reply card payments that collectively total \$1,000 and a mailing list charge of \$1,200.

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1 the topic of immigration on its website, and hosts Internet forums that allow for individual
2 participation. ALIPAC also uses Internet e-mail to disseminate its candidate endorsements. For
3 example, the initial complaint attaches as Exhibit E an October 28, 2006 e-mail in which William
4 Gheen, President of ALIPAC, urges recipients to contribute to the endorsed campaigns through the
5 campaigns' own websites or by express mail and to volunteer with those campaigns, and provides a
6 hyperlink to a listing of ALIPAC endorsed candidates.

7 The complaint alleges that neither ALIPAC nor any of its endorsed candidates disclosed any
8 of the in-kind support from the ALIPAC web site, or in-kind contributions for the cost of equipment
9 or software to distribute ALIPAC e-mails. In response, ALIPAC claims that it has been told on
10 several occasions by Commission personnel that it did not have to disclose its website endorsements
11 or the minimal costs associated with the e-mails it sent encouraging people to support them.
12 ALIPAC states that its endorsement page and emails "constitute a very small fraction of our online
13 operations," that the list of endorsed candidates "was placed in public view as a normal part of our
14 operations without extra expenditures," and that "[n]o additional costs were incurred by us in either
15 compensated man-hours or service provider fees."

16 2. Analysis

17 It is somewhat unclear what the candidate means by its allegations that neither ALIPAC nor
18 its endorsed candidates "disclosed any of the in-kind support from the ALIPAC, or in-kind
19 contributions for the cost of equipment or software to distribute ALIPAC e-mails." To the extent
20 the complaint is alleging that the cost of ALIPAC's Internet endorsements were in-kind
21 contributions because they were coordinated, it does not provide any information indicating

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1 coordinated activity between ALIPAC, the communication's sponsor, and a particular candidate.
2 Moreover, under the Commission's recent Internet rules, that allegation would fail.

3 The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in
4 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
5 authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). To be
6 considered coordinated, a communication must be a "public communication." See 11 C.F.R.
7 § 109.21. A "public communication" includes a communication by means of any broadcast, cable,
8 newspaper, magazine, outdoor advertising facility, mass mailing, telephone bank to the general
9 public, or any other form of "general public political advertising." The term "general public
10 political advertising," however, does not include communications over the Internet, except for
11 communications placed for a fee on another person's website. 11 C.F.R. § 100.26.

12 Here, ALIPAC displayed the endorsement communications on its own Internet website, and
13 there is no information indicating that these communications were ever placed for a fee on another
14 person's website. Similarly, ALIPAC's e-mails are Internet communications that are not considered
15 to be a form of "general public political advertising" because "there is virtually no cost associated
16 with sending e-mail communications, even thousands of e-mails to thousands of recipients... ."
17 *E&J for Internet Communications*, 71 Fed. Reg. 18589, 18596 (April 12, 2006). Because
18 ALIPAC's endorsements and emails are not "public communications," they do not meet the criteria
19 for coordinated communications, and are not reportable in-kind contributions.

20 To the extent that the complaint is alleging that ALIPAC violated 2 U.S.C. § 434(b) by
21 failing to disclose its Internet endorsements as independent expenditures, it is likely that the
22 associated costs were so minimal that they would not trigger a reporting obligation. See Statement

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1 of Reasons, MUR 5491 (Fallwell); *see also E&J for Internet Communications* at 18594 (“the cost of
2 placing a particular piece of political commentary on the Web is generally insignificant. The cost of
3 such activity is often only the time and energy that is devoted by an individual to share his or her
4 views and opinions with the rest of the Internet community.”). The Act requires that political
5 committees must itemize disbursements that it makes in an aggregate amount or value in excess of
6 \$200 in connection with an independent expenditure. 2 U.S.C. § 434(b)(6)(B)(iii). The complaint
7 provides no information suggesting the costs associated with ALIPAC’s Internet endorsements meet
8 this threshold.

9 The complaint also alleges, without any supporting facts, that ALIPAC may have failed to
10 disclose in-kind contributions of travel and telephone expenses it made to support its endorsed
11 candidates. In its Response, ALIPAC states that it “made no travel expenditures or phone calls at
12 our expense to communicate our support of individual candidates to the public or voters,” and that
13 “[a]ll travel expenses were for summits, conferences, debates, Congressional hearings, and other
14 similar events, none of which were campaign-related.” There is no contrary information suggesting
15 that ALIPAC communicated support for candidates in connection with these events.

16 Therefore, the Commission finds no reason to believe that Americans for Legal Immigration
17 PAC - 2006 and Daryl George Jurbala, in his official capacity as treasurer, violated 2 U.S.C.
18 § 434(b) in connection with failures to report in-kind contributions or independent expenditures for
19 Internet communications and travel and telephone expenses on behalf of its endorsed candidates.
20

B. Alleged Failure to Disclose Excessive In-Kind Contribution from Home Office Use

1. Facts

The complaint alleges, based on media reports (that are not provided and we could not locate) and “the absence of office expenses in disclosures,” that ALIPAC operates out of the home of its president William Gheen. *See* Amended Complaint filed March 5, 2007. Additionally, it states “the home office likely includes a full set of office equipment, such as a personal computer, supplies, desk, etc.” *Id.* The complaint further contends that since “[n]one of ALIPAC’s FEC disclosures report any in-kind contributions from Mr. Gheen reflecting the value of facilities provided by Mr. Gheen,” coupled with the belief that “the value of the use of the home likely exceeds the \$5,000 annual individual contribution limit,” ALIPAC violated the Act by failing to disclose that it received an excessive in-kind contribution from William Gheen in connection with using his residence as office space to conduct ALIPAC activities, and that Gheen violated the Act by making the excessive contribution. *Id.* The complaint provides no information indicating that Gheen, in fact, uses his residence in this manner, and neither ALIPAC nor Gheen addressed this allegation in a response.⁴

2. Analysis

Pursuant to Commission regulations, in-kind contributions can occur where a person provides any goods or services without charge or at a charge that is less than the usual and normal

⁴ As set forth in footnote one, complainant filed a complaint and three amendments. ALIPAC’s treasurer responded to the original complaint and Gheen responded to the first amended complaint. In his response, Gheen stated that the complainant was “maliciously trying to harass [him] and our organization,” and that ALIPAC did not “plan to answer anymore of [complainant’s] claims unless ordered to by the FEC.” The allegation regarding home office space was not made until the second amended complaint on March 5, 2007, which was also the first time Gheen was personally notified.

1 charge for such goods or services. 11 C.F.R. § 100.52(d). The maximum limit that individuals can
2 contribute to political committees such as ALIPAC in any calendar year is \$5,000. *See* 2 U.S.C.
3 § 441a(a)(1)(C). Political committees shall not knowingly accept such contributions or
4 expenditures. *See* 2 U.S.C. § 441a(f).

5 If Gheen, a salaried employee of ALIPAC since September 2005, provided free residential
6 office space to ALIPAC, he provided “something of value” to the Committee without charge,
7 resulting in an in-kind contribution. *See* 11 C.F.R. § 100.52(d)(1); *Compare* Advisory Opinion
8 1997-15 (Nickalo) (PAC not required to make rental payments to a volunteer for volunteer services
9 performed at home). Nonetheless, even if Gheen performed tasks associated with ALIPAC at his
10 residence, the value of the dedicated residential space would likely be minimal; if Gheen uses a
11 laptop computer, he could be performing tasks outside of his residence, further minimizing the
12 value of the residential space. In any event, because the complaint provides no factual basis for the
13 allegation that Gheen in fact used his home for committee activities, the responses do not address
14 the allegation, and there is no publicly available information confirming where ALIPAC’s activities
15 are carried out, there is insufficient information to warrant further enforcement action. Therefore,
16 the Commission finds no reason to believe that William Gheen made an excessive in-kind
17 contribution to ALIPAC in the form of home office space in violation of 2 U.S.C. § 441a(a)(1)(C)
18 and that Americans for Legal Immigration PAC – 2006 and Daryl George Jurbala, in his official
19 capacity as treasurer, knowingly accepted and failed to report such contribution in violation of
20 2 U.S.C. §§ 434 and 441a(f).

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C. Alleged Failure to Disclose Online Store Finances**1. Facts**

The complaint alleges that ALIPAC should have disclosed receipts and disbursements relating to an “online store” that sells merchandise with the ALIPAC logo. In its Response, ALIPAC acknowledges that at one time its website provided a link to an online store that sold items ranging from t-shirts to messenger bags, each displaying the name “ALIPAC.”⁵ According to ALIPAC, a volunteer supporter set up the online store through a “Café Press” account, the volunteer sold the items at cost, and the buyers of the merchandise pay Café Press directly. Additionally, ALIPAC maintains that none of its officers handle the sales site or account, there are no profits, and none of ALIPAC’s officers or volunteers make or receive payments for the effort.

Publicly available information indicates that Café Press is an online marketplace that allows sellers to open an online shop in which they can independently create and sell a wide variety of products (such as t-shirts, coffee mugs, and backpacks) with no upfront costs or inventory to manage. Café Press establishes a base price for each item that a seller displays on its Cafe Press account. The seller can establish any price for a particular item above the respective base price; the amount over the base price represents the seller's profit. See http://www.cafepress.com/cp/info/sell/intro_cost.

2. Analysis

The available information does not indicate that ALIPAC should have disclosed the items in question. The complaint provides no facts establishing that ALIPAC was involved in the administration of the online store. In sharp contrast, ALIPAC refutes any involvement in the

⁵ This link is no longer available for view.

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enterprise, and there is no contrary information to dispute its claim that a volunteer supporter of ALIPAC was responsible for the creation and administration of the Café Press account. Indeed, there is no information establishing if any items were sold, let alone if the purported volunteer operating the online store made any profit that was passed on to ALIPAC.⁶ Therefore, given the lack of facts provided by the complaint, coupled with ALIPAC's representations that it made no expenditures to, and received no payments or profits from the online store, the Commission finds no reason to believe that Americans for Legal Immigration PAC – 2006 and Daryl George Jurbala, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose receipts obtained or disbursements made in connection with an online store.

D. Receipt of an Alleged Prohibited Contribution from the Salvation Army

1. Facts

The complaint alleges that ALIPAC received a prohibited contribution in the amount of \$1,317.79 from the Salvation Army, a 501(c)(3) corporation, on August 26, 2005. In its Response, ALIPAC maintains that the receipt reflects a refund from the Salvation Army of a previous donation that it had made to the organization.

2. Analysis

The Act prohibits corporations from making contributions from their general treasury funds in connection with a federal election and political committees from knowingly receiving or accepting such contributions. *See* 2 U.S.C. § 441b(a). ALIPAC's disclosure reports support this

⁶ The complaint attaches a listing of the merchandise and corresponding prices that were placed on the online store. In comparing the most recent base prices found on the Café Press website with the online store's price list provided with the complaint, there are slight differences for many of the items; these price differences range from as little as ten cents for a specific item to \$2.40. It is possible, however, that the prices on the list provided with the complaint were more in line with the Café Press base prices offered at that time.

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1 assertion as they show that ALIPAC disclosed two transactions with the Salvation Army. First, as
2 reported in its 2005 August Monthly Report, on July 15, 2005, ALIPAC made a \$1,317.79
3 disbursement to the Salvation Army. In its next report, the 2005 Year-End Report, ALIPAC
4 disclosed its receipt of the same amount from the Salvation Army on August 26, 2005. As such, it
5 appears that the two transactions reflect a donation followed by a refund of that donation, and not
6 the receipt of a prohibited contribution. Therefore, the Commission finds no reason to believe that
7 Americans for Legal Immigration PAC – 2006 and Daryl George Jurbala, in his official capacity as
8 treasurer, violated 2 U.S.C. § 441b(a).

9 **E. Alleged Fraudulent Misrepresentations**

10 **1. Facts**

11 The complaint, without citing to the Act's provisions or precedent, also alleges that
12 "ALIPAC defrauded contributors by representing in numerous communications that [it] is a PAC
13 intended to elect candidates when in actuality [it] intended to fund salaries, etc. with contributions
14 and very little for candidates." It alleges that ALIPAC's disclosure reports show that Gheen has
15 been paid a salary since mid-2004 and that during the 2005-2006 election cycle, most of ALIPAC's
16 contributions went to fund Gheen's salary and travel expenses, with only 3% of the funds raised
17 during that cycle going to candidate contributions. In denying this allegation in its Response,
18 ALIPAC states that 40%, rather than most, of the funds that it had raised in a two-year cycle paid for
19 salaries; its disclosure reports appear to support this assertion.

20 **2. Analysis**

21 This allegation does not appear to have merit. The complaint is apparently incorrect in
22 asserting that Gheen started receiving salary payments at the time of an April 1, 2005 ALIPAC

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Americans for Legal Immigration PAC – 2006 and Daryl George Jurbala, in his official capacity as treasurer William Gheen

1 email in which ALIPAC represented that he did not receive a salary. *See* Attachment to Amended
2 Complaint filed March 8, 2007. ALIPAC did not file its Statement of Organization until September
3 2004, and, according to its disclosure reports, Gheen did not receive a salary payment until
4 September 2005, several months after the email in question. Further, while it appears that ALIPAC
5 made only two political contributions, the Act and the Commission's regulations do not require
6 political committees to contribute to any set number of candidates.⁷ Additionally, the complaint's
7 position that ALIPAC misled readers in the same email by stating a desire to build "candidate
8 campaign reserves" when it ultimately made few contributions is also tenuous. The fact that it was
9 unable to attain that goal does not, in and of itself, mean that ALIPAC was misleading recipients at
10 the time of the communication. Hence, there is no basis to suggest that ALIPAC engaged in
11 fraudulent activities.

12 Therefore, the Commission finds no reason to believe that Americans for Legal Immigration
13 PAC – 2006 and Daryl George Jurbala, in his official capacity as treasurer, violated the Federal
14 Election Campaign Act of 1971, as amended, or the Commission's regulations with respect to
15 alleged fraudulent misrepresentations. The Commission has closed the file in this matter.

⁷ ALIPAC disclosed a \$1,000 contribution on June 26, 2006 to the Committee to Elect John Jacob, and a \$500 contribution on October 4, 2006 to the Walter Jones Committee-2006.